

THIS DISPOSITION IS NOT  
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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Broadview Associates LLC

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Serial No. 75/178,434

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Morton Amster of Amster Rothstein & Ebenstein for Broadview  
Associates LLC.

Sophia S. Kim, Trademark Examining Attorney, Law Office 106  
(Mary Sparrow, Managing Attorney).

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Before Simms, Cissel and Chapman, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

Broadview Associates LLC (applicant), a New Jersey  
limited liability company, has appealed from the final  
refusal of the Trademark Examining Attorney to register the  
mark INFORMATION TECHNOLOGY INDEX for written reports  
rendered from time to time on the performance of

information technology stocks.<sup>1</sup> Relying upon dictionary definitions, excerpts from a computerized search system and various third-party applications and registrations, the Examining Attorney maintains that applicant's mark is merely descriptive of applicant's written reports, under Section 2(e)(1) of the Act, 15 USC § 1052(e)(1).

Applicant has appealed and briefs have been submitted. Applicant did not request an oral hearing.

We affirm.

Citing a number of cases where marks have been held to be merely descriptive or generic when they described the subject matter of the publications, the Examining Attorney contends that "INFORMATION TECHNOLOGY" refers to "a multifaceted area including the use of computers and telecommunications for the purpose of advanced information delivery," and that the term "INDEX" in relation to applicant's goods refers to a statistical composite that measures the ups and downs of stocks. Examining Attorney's brief, 4, 5. In this regard, the Examining Attorney has made of record a dictionary definition of the word "index"

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<sup>1</sup> Application Serial No. 75/178,434, filed October 8, 1996, under Section 1(b) of the Act, 15 USC § 1051(b), based upon applicant's assertion of a bona fide intention to use the mark in commerce.

meaning a "statistical composite that measures changes..."<sup>2</sup>

It is the Examining Attorney's position that, given the fact that applicant's reports concern information technology stocks, the asserted mark INFORMATION TECHNOLOGY INDEX merely describes applicant's reports. More particularly, noting that a term is merely descriptive if it describes an ingredient, quality, characteristic, function or feature of the relevant goods, and contending that applicant's written reports "most likely will feature an index of information technology company stocks," the Examining Attorney maintains that applicant's mark is merely descriptive of this feature of its goods. Examining

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<sup>2</sup> The complete definition of the word "index", from the Dictionary of Finance and Investment Terms (1991), is:

[S]tatistical composite that measures changes in the economy or in financial markets, often expressed in percentage changes from a base year or from the previous month. For instance, the CONSUMER PRICE INDEX uses 1967 as the base year. That index, made up of key consumer goods and services, moves up and down as the rate of inflation changes. By the early 1980s the index had climbed from 100 in 1967 into the low 300s, meaning that the basket of goods the index is based on had risen in price by more than 200%.

Indexes also measure the ups and downs of stock, bond, and commodities markets, reflecting market prices and the number of shares outstanding for the companies in the index. Some well-known indexes are The New York Stock Exchange Index, The American Stock Exchange Index, Standard & Poor's Index, and The Value Line Index...

Attorney's brief, 4.<sup>3</sup> The Examining Attorney also refers to third-party applications and registrations in which the words "INFORMATION TECHNOLOGY" and the word "INDEX" have been disclaimed or where such marks are on the Supplemental Register. Further, the Examining Attorney has made of record some excerpts from a computerized database in which the phrase "information technology index" was used. However, it appears that most of those excerpts are from foreign publications, the extent of distribution of which in this country is not known. See *In re Men's International Professional Tennis Council*, 1 USPQ2d 1917, 1918-19 (TTAB 1986) ("[W]e cannot -- absent other evidence -- infer that these foreign uses have had any material impact on the perceptions on the relevant public in this country."). With respect to the third-party applications and registrations which include disclaimers of the word "INDEX," a number of those registrations issued for newsletters, books and sections or columns of magazines (and not for a statistical composite or an "index").

Applicant, on the other hand, contends that its mark is just suggestive of its reports because the asserted mark does not forthwith convey an immediate idea of the goods or

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<sup>3</sup> The Examining Attorney states that applicant has not indicated that its reports will not feature an index of information

any concrete or specific information concerning the goods. According to applicant, consumers must use their imaginations to understand the nature of applicant's goods.

[P]rospective customers, when encountering Appellant's mark, may envision some type of reference material, but the true nature of that reference material, namely, a written report on the performance of information technology stocks, is not readily apparent from the mark.

Applicant's brief, 4. Applicant also states that there are other definitions of the word "index" which could occur to consumers, such as a device that serves to indicate a value or quantity, something that leads to a particular fact or conclusion, a list, or a number derived from a series of observations and used as an indicator or measure.

Applicant states that its mark could just as likely be used to identify a book listing a variety of technical products. Brief, 4. Finally, applicant urges us to resolve all doubts in its favor.

Upon careful consideration of this record and the arguments of the attorneys, we conclude that applicant's mark is merely descriptive of a feature of its written reports concerning the performance of information technology stocks. First, the question of whether a

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technology company stocks.

particular term is merely descriptive must be determined, not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term is or will be used on or in connection with those goods or services and the possible significance that the term has or will likely have to the average purchaser of the goods or services. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Consumers viewing applicant's mark INFORMATION TECHNOLOGY INDEX in connection with written reports concerning the performance of information technology stocks will immediately perceive the asserted mark as describing a feature (an index) concerning information technology stocks included in the reports. While this is an intent-to-use application and there are, therefore, no specimens of use, applicant has not argued that the Examining Attorney is incorrect when she states that applicant's written reports most likely will feature an index of information technology stocks. Accordingly, in viewing the description of goods broadly, we conclude that applicant's asserted mark merely describe a feature of its goods.

**Ser No.** 75/178,434

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

B. A. Chapman  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board